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In The
Supreme Court of the United States

No. [redacted]95

October Term, 1920

ROBERT HAWES,

Plaintiff in Error,

vs.

THE STATE OF GEORGIA,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

BRIEF FOR PLAINTIFF IN ERROR.

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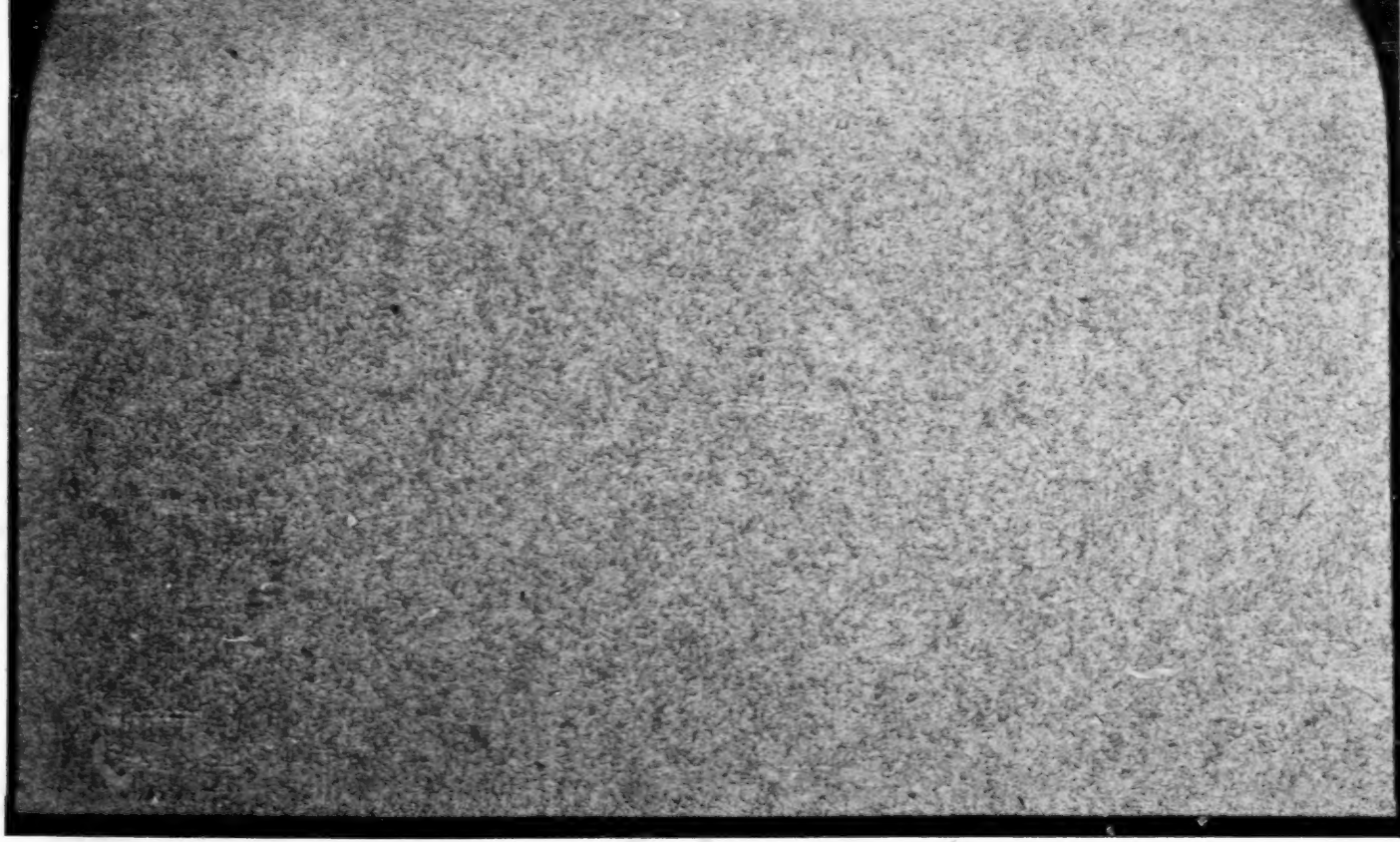

In the
Supreme Court of the United States

ROBERT HAWES,
Plaintiff in Error,
vs
THE STATE OF GEORGIA
Defendant in Error.

No. 425
October Term, 1920

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF FOR PLAINTIFF IN ERROR

STATEMENT OF CASE

Robert Hawes was indicted in the Superior Court of Lincoln County for the offense of permitting and allowing "a certain person and persons, to the Grand Jury unkown, to have and possess and locate on his premises apparatus to-wit, Bear and a furnace, for the stilling and manufacturing of liquors and beverages specified in the Act of the General Assembly of Georgia, approved March 28th, 1917."

This act is found in the Acts of the General Assembly of 1917, pages 1 to 19 inclusive, and among other things prohibits anyone from allowing apparatus of the kind indicated to be located on his premises.

The constitutional question involved in the present case

arises out of the 22nd section of this act, which is quoted as follows:

> "When any such apparatus is found or discovered upon said premises, same shall be prima facie evidence that the person in actual possession had knowledge of the existence of the same, and on conviction thereof, shall be punished as prescribed in Section 16 of this Act, the burden of proof in all cases being upon the person in actual possession to show the want of knowledge of the existence of such apparatus on his premises."

The proof in the case was about as follows: Robert Hawes and his wife rented a farm in Lincoln County, Georgia. The apparatus for manufacturing liquor was found about 300 yards from the house in which Hawes and his wife lived. A pasture intervened between the house and the still. There was also intervening a hill with some pines on it, so that the still was entirely hidden from view from the dwelling house. It appeared that there was a path that went from the house in the general direction of and nearby the still, but this path had been there for over 20 years.

The evidence stopped at this point. Under the Act of the General Assembly, and indeed under general principles of criminal law, knowledge that the still was located on his property is an essential ingredient of the crime. There was no evidence of knowledge offered, the state relying on the statutory presumption under the 22nd section of the act which has been heretofore quoted.

The defendant's good character and good reputation was proved without contradiction.

In charging the jury, the trial court instructed them that under the 22nd section of the act referred to, the state made out a prima facie case by showing that the still was on the defendant's property without introducing any evidence of knowledge on his part, and that the burden was

thereupon shifted to the defendant to show that he did not know that it was there. An exception was properly taken to this charge presenting the constitutional question hereinafter to be more fully stated. The case was carried to the Supreme Court and the verdict and judgment of conviction were affirmed by the Supreme Court of Georgia.

In presenting the facts bearing on this case, it is necessary to point out that under the law of Georgia the defendant in a criminal case is not allowed to testify as a witness. He is allowed to make an unsworn statement, which according to the state statute, "shall have such force only as the jury may think right to give it." The statute involved is Section 1036 of the Penal Code, and is quoted in full as follows:

> "In all criminal trials the prisoner shall have the right to make to the court and jury such statement in the case as he may deem proper in his defense. It shall not be under oath, and shall have such force only as the jury may think right to give it. They may believe it in preference to the sworn testimony in the case. The prisoner shall not be compelled to answer any questions on cross-examination, should he think proper to decline to answer."

Also, the defendant's wife was, under the Georgia law, not a competent witness in his behalf. Sub-section 4 of Section 1037 of the Penal Code is quoted in full as follows:

> "Husband and wife shall not be competent or compellable to give evidence in any criminal proceeding for or against each other, except that the wife shall be competent, but not compellable, to testify against her husband upon his trial for any criminal offense committed, or attempted to have been committed, upon her person. She is also a competent witness to testify for or against her husband in cases of abandonment of his child, as provided for in Section 116 of this Code.'

It thus appears that by operation of the statutory presumption under Section 22 of the act under which the present indictment was found, the mere presence of the still on the defendant's property created a prima facie presumption that he knew and consented to its presence and operation and cast the burden on him of disproving such knowledge; and it further appears that by the operation of the Georgia Statutes with regard to defendants and their wives as witnesses, both the defendant and his wife were disqualified from testifying to show such lack of knowledge on his part, they being the only two people who were present and could furnish such proof.

SPECIFICATION OF ERRORS RELIED ON

The assignments of errors in this case present in different forms only one constiutional question, viz: that the 22d Section of the Act of the General Assembly of Georgia approved March 28, 1917, hereinbefore quoted and creating the presumption of guilty knowledge from the finding of apparatus for distilling liquors upon premises owned or occupied by the defendant is unconstitutional in that it violates the Fourteenth Amendment of the Constitution of the United States. Both the trial court and the Supreme Court of Georgia enforced this statutory presumption and the same therefore entered into the conviction of the present plaintiff in error.

AUTHORITIES AND ARGUMENT

Certain recent decisions of this court have settled the test to be applied in determining the validity under the Fourteenth Amendment of the Constitution of the United States of a statutory presumption, and render unnecessary

an elaborate inquiry into the general principles of law involved.

It is competent for the legislature to provide by statute that proof of one fact shall authorize a prima facie presumption of another fact on which guilt depends, provided there is a rational connection between the fact proved and the ultimate fact presumed.

Adams v. New York, 192 U. S. 585, 48 L. ed. 575.

Hawkins v. Bleakly, 243 U. S. 210, 61 L. ed. 678.

But it is also settled that where the presumption thus authorized is arbitrary or unreasonable, the statute violates constitutional rights and is void.

Bailey v. Alabama, 219 U. S. 219, 55 L. ed. 191.

McFarland v. American Sugar Refining Co., 241 U. S. 79, 60 L. ed. 899.

The question, therefore, in regard to each particular statute is this: Is the presumption authorized by the statute arbitrary or unreasonable? If it is, the statute is invalid; if not, the statute will be sustained.

Obviously, each case must be determined by a consideration of the particular statute involved. We are unable to find that a statute exactly like the one under consideration has been considered from this standpoint.

It is respectfully submitted that the particular statute is both arbitrary and unreasonable. It is in no way analagous to the statute authorizing a presumption from finding unlawful articles in the possession of the defendant, that is to say, on his person or in his personal possession; such, for example, as the statute considered in *Ng Choy Fong v. United States*, 245 Fed. 305.

The finding of unlawful articles in the personal pos-

session of a man leads irresistibly to the conclusion of his knowledge that he has them and very strongly leads to the conclusion that he intends an unlawful use of them. If the statute in question had provided that finding distilling apparatus in the personal possession of the accused should authorize the inference that he intended to use it to distill liquor, the case would be different.

Even if the statute had been limited to certain classes of property such as city property or buildings or dwellings, the case in behalf of the statute would have been much stronger.

The particular statute takes in all classes of property. If the apparatus is found on *any* property occupied by the accused *anywhere*, he is presumed to have knowingly permitted it to be there. It may be on property remote from his residence. It might even be on property in another county or another portion of the state. It might be placed on property occupied by the accused during a time when the accused was absent from the state. The statute is so drawn that the inference of knowledge may be drawn under circumstances which offend against reason and common sense. Many examples could be given, but the scope of the statute is such that they will readily occur to the court.

Indeed in the present case the distilling apparatus was found on country property some distance from the home of the defendant, who was a tenant on the property, and completely hidden from it by a pine thicket. The apparatus was not in use.

The court will also bear in mind in this connection that the presumption authorized by the statute is one of knowledge. The defendant is presumed to know of the presence of the apparatus. Now, under the Georgia law, the defendant is himself disqualified as a witness, and after a statutory presumption of his knowledge has been created, he is by another statute prevented from testifying to rebut it.

It is true that he is permitted under the Georgia law, as pointed out, to make a qualified statement, but the jury are instructed that this is not evidence in the case. See in this connection the discussion in Bailey v. Alabama of a somewhat similar situation.

Also by another Georgia statute heretofore referred to, the defendant's wife is disqualified as a witness and she and the defendant were the only persons who could have contradicted the presumption which the statute authorized.

About the only recourse left to the accused was to prove his good character. This was clearly shown and not denied, but was ignored by the jury.

Bearing in mind the unlimited application of this statute and the extreme conclusions that may be drawn by this presumption, it is respectfully submitted that the statute is arbitrary and unreasonable. It may be admitted that in some cases there is some slight and attentenuated reason for inferring knowledge from the presence of such apparatus. It some extreme instances (if, for example, the apparatus was found in the defendant's dwelling house occupied by him alone) there might be considerable reason for inferring knowledge, but the present statute goes far beyond any such limites and authorizes conviction of guilt beyond a reasonable doubt in instances where there is no logical connection between the fact proved and the fact presumed. And as applied in this case the presumption goes beyond the limits of reason.

Respectfully submitted,

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